

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THOMAS C. FLEETWOOD, JR.

v.

B.C.E., INC.

:

:

: Civil Action No. DKC 2003-2125

:

:

MEMORANDUM OPINION

Presently pending and ready for resolution is the motion of Defendant B.C.E., Inc. (BCE) to dismiss Plaintiff's complaint for a lack of personal jurisdiction under Fed.R.Civ.P. 12(b)(2) or, in the alternative, for a failure to state a claim under Fed.R.Civ.P. 12(b)(6). The issues have been fully briefed and no hearing is deemed necessary. Local Rule 105.6. For the reasons that follow, Defendant's motion will be granted.

I. Introduction

Prior to February 11, 2002, Plaintiff Thomas Fleetwood worked for over 30 years at Xerox Corporation as a marketing executive. During 2001, Plaintiff was recruited by Teleglobe USA, Inc. (Teleglobe USA),¹ a sixth-tier subsidiary of Defendant

¹ Defendant contends that the legal name of Plaintiff's employer is Teleglobe USA and that the name BCE Teleglobe, occasionally used by Plaintiff, is only a trade name. While Plaintiff initially refers to his employer as BCE Teleglobe, he also uses the name Teleglobe USA interchangeably throughout his opposition. See paper no. 8, at 6. To maintain consistency, the court will refer to Plaintiff's employer by its legal name, (continued...)

BCE, to work in Teleglobe USA's Federal Government Sales Division.² Plaintiff alleges that, while recruiting Fleetwood, Teleglobe USA represented that there existed a close interdependent relationship between Teleglobe USA and its parent company, BCE. Based upon the representation that Teleglobe USA was both endorsed and sponsored by BCE, Fleetwood accepted the position with Teleglobe USA as the Manager for the Federal Government Sales Division. See paper no. 1, ¶ 16. In this capacity, Plaintiff was responsible for sustaining and expanding Teleglobe USA's profitable revenue growth through a dedicated federal marketplace. See *id.* ¶ 18. Plaintiff further alleges that his responsibilities included "build[ing] the division and induc[ing] the federal purchasers to enter into contracts with [Teleglobe USA] while expressly capitalizing on the goodwill the name BCE carried in the industry" See *id.* ¶ 17.

On April 24, 2002, only two and one-half months after Plaintiff began working for Teleglobe USA, BCE announced that it

¹(...continued)
Teleglobe USA.

² Teleglobe USA was owned by Teleglobe Communication Corporation, which was owned by a succession of U.S. Companies, Teleglobe Investment Corp., Teleglobe Holding Corp. and Teleglobe Holdings (U.S.) Corp., and ultimately by Teleglobe Inc., a Canadian Public corporation. Teleglobe Inc. is 95%-owned directly and indirectly by Defendant BCE, a large Canadian communication corporation. See paper no. 4, ex. A, ¶ 8.

had decided to cease long-term funding of the operations of its subsidiary, Teleglobe Inc. This decision prompted massive layoffs in the Washington area offices. See *id.* ¶ 19. Plaintiff also contends, in his opposition, that the termination of funding to Teleglobe Inc. caused the "collapse of Teleglobe Inc. and all of its U.S. subsidiaries." See paper no. 8, at 4.

On May 15, 2002, Fleetwood was notified of the termination of his employment and the elimination of his position. Plaintiff alleges that BCE's termination of funding was accompanied by the resignation of all Teleglobe USA board members closely affiliated with BCE and the direct allocation of twenty-five million dollars from BCE to Teleglobe USA -- money which was expressly allocated for financing the severance packages of Teleglobe USA employees. See paper no. 1, ¶ 19. Plaintiff asserts that the BCE decision was the product of an ongoing, concerted effort by BCE management during the preceding months. See *id.* ¶ 20.

On July 18, 2003, Plaintiff filed suit against BCE, alleging four counts of (1) fraud in the inducement - intentional misrepresentation, (2) negligent misrepresentation; (3) detrimental reliance - promissory estoppel, and (4) tortious interference with a contractual relationship. Plaintiff's claims arise out of the alleged representations and promises

made by Teleglobe USA, acting as an agent of BCE, regarding BCE's long-term commitment to, and support of, its subsidiaries. Defendant now moves to dismiss for lack of personal jurisdiction or, in the alternative, for a failure to state a claim.

II. Standard of Review

When a defendant files a motion to dismiss for lack of personal jurisdiction over a nonresident defendant, the plaintiff must prove grounds for jurisdiction, by a preponderance of the evidence. *Mylan Laboratories, Inc. v. Akzo, N.V.*, 2 F.3d 56, 60 (4th Cir. 1993). When the motion is decided upon without an evidentiary hearing, but resolved solely on the basis of the complaint, affidavits and discovery materials, the plaintiff need prove only a *prima facie* case of personal jurisdiction. *Id.*; *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989). In determining whether plaintiff has met this burden, the court "must draw all reasonable inferences arising from the proof, and resolve all factual disputes, in the plaintiff's favor." *Mylan*, 2 F.3d at 60; see also *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 396 (4th Cir. 2003).

A court may not exercise personal jurisdiction over a non-resident defendant unless the activities of that individual are sufficient to subject the party to that forum's long-arm statute. Maryland's long-arm statute has been interpreted as extending to the limits allowed by the Constitution under the Due Process Clause of the Fourteenth Amendment, and, therefore, the two analyses are collapsed. *Mylan*, 2 F.3d at 61, n.3. The

statute permits the assertion of personal jurisdiction "over (1) persons who directly conduct activities in Maryland; and (2) person who conduct activities in Maryland through an agent." *Id.* at 61; see also Md. Code Ann., Cts. & Jud. Proc. § 6-103(b) (2002 Repl. Vol.).

III. Analysis

A. Personal Jurisdiction

1. Jurisdiction Based on BCE's Conduct in Maryland

Plaintiff's argument for the assertion of personal jurisdiction is based primarily on the actions of its sixth-tier subsidiary, Teleglobe USA. Briefly, however, Plaintiff makes three assertions upon which he claims jurisdiction may be based on conduct taken by BCE in Maryland: (1) that BCE has "substantial U.S. telecommunications activities"; (2) that BCE "knowingly disseminated misinformation in websites, press releases, and financial reports to persons in Maryland, Virginia and the District of Columbia"; and (3) that BCE "directed its subsidiaries in the D.C. area to rely upon the BCE name and financial reputations." See paper no. 8, at 18.

BCE is a Canadian corporation with headquarters and corporate officers in Montreal. It has no employees or offices in Maryland, owns no real or personal property in Maryland, and does not maintain any telephone listings, mailing addresses or

back accounts in Maryland. See paper no. 4, ex. A, ¶ 5. BCE does not provide services in Maryland or derive revenue from any activity in Maryland; it is neither registered nor licensed to do business in Maryland. See *id.* ¶ 6. In order to assert jurisdiction based on the contacts a non-resident defendant has with the forum state, those contacts must be "'purposefully established' by the defendant such that he 'will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts.'" *Burns & Russell Co. of Baltimore v. Oldcastle, Inc.*, 198 F.Supp.2d 687, 689-90 (D.Md. 2002)(quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75, (1985) (citations omitted)). Jurisdiction may be asserted in one of two forms: general or specific.

General jurisdiction permits a court to subject a non-resident defendant to suit in the forum as to claims wholly unrelated to any contact the non-resident has with the forum; it exists only where the foreign defendant's in-state activities amount to "continuous and systematic" contact with the state. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 416, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

. . . .

A court has specific jurisdiction over a defendant when a cause of action arises out of the defendant's contacts with the forum. *Helicopteros*, 466 U.S. 408 at 414, 104 S.Ct. 1868, 80 L.Ed.2d 404. A "tri-partite" showing is required to establish specific jurisdiction: (1) "the nonforum defendant purposely directed its

activities toward residents of the forum state or purposely availed itself of the privilege of conducting activities therein; (2) plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) the forum's exercise of personal jurisdiction in the case is reasonable, i.e., is consistent with 'fair play and substantial justice.'" *Cape v. von Maur*, 932 F.Supp. 124, 126 (D.Md.1996)(quoting *Burger King Corp.*, 471 U.S. at 477-78, 105 S.Ct. 2174).

Burns, 198 F.Supp.2d at 690.

In this case, none of the three allegations advanced by Plaintiff, even if taken as true, is enough to support an assertion of general or specific jurisdiction. While Plaintiff claims BCE conducted substantial activities in Maryland, the papers do not support such an allegation; rather, they contradict it. Defendant, in the affidavit of Leo Houle, Chief Talent Officer for BCE, asserts that "BCE does not and did not own any fiber-optic cables, broadband, or 'telecommunications network' in the United States. BCE does not own any asset in Maryland." See paper no. 13, ex. C, ¶ 5. Furthermore, BCE does not manufacture, sell, distribute or take orders for products or services of its subsidiaries, nor is it registered or licensed to do business in Maryland. See paper no. 4, at 8 & ex. A, ¶¶ 6-7. Even construing all relevant pleading allegations in the

light most favorable to Plaintiff,³ there is insufficient proof to support a reasonable inference that BCE had conducted business or activities in Maryland of such an "extensive, continuous, and systematic" nature as to meet the heightened showing requirement for general jurisdiction. *Tyler v. Gaines Motor Lines, Inc.*, 245 F.Supp.2d 730, 732 (D.Md. 2003); see also *Goodyear Tire & Rubber Co. v. Ruby*, 540 A.2 481, 486 (Md. 1988).

Similarly, Plaintiff's allegations do not support an assertion of specific jurisdiction based on BCE's conduct related to the suit. According to Plaintiff, BCE disseminated misinformation in websites, press releases and financial reports in Maryland, Virginia and Washington, D.C., and this information was accessed by Plaintiff in Maryland and Virginia. Plaintiff also claims that BCE directed its subsidiaries *in the D.C. area* to rely on the BCE name and financial reputation. See paper no. 8, at 18 (emphasis added). As a preliminary matter, the actions

³ When considering a personal jurisdiction challenge without an evidentiary hearing, the court must "construe all relevant pleading allegations in the light most favorable to the Plaintiff, assume credibility, and draw the most favorable inferences for the existence of jurisdiction." *Mylan*, 2 F.3d. at 62 (quoting *Combs v. Bakker*, 886 F.2d 673 (4th Cir. 1989))(emphasis in original). Thus, it is proper for the court to consider the allegations and proffered proof of both Plaintiff and Defendant when deciding Defendant's motion to dismiss. *Id.*

of BCE in Virginia and the District of Columbia are irrelevant to the court's determination of jurisdiction based on conduct in Maryland. Furthermore, Plaintiff has not alleged, nor do the pleadings demonstrate, that the dissemination of information in Maryland was done with the "intent of engaging in business or any other transaction in Maryland." *ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707, 715 (4th Cir. 2002). BCE's passive activity of posting information over the internet, without more, is insufficient to establish "purposeful conduct directed at [Maryland] . . . with the manifested intent of engaging in business or other interactions within [Maryland]" as necessary to assert personal jurisdiction. *Id.* at 713-14; see also *Estate of Bank v. Swiss Valley Farms, Co.*, 286 F.Supp.2d 514, 519 (D.Md. 2003)(jurisdiction premised solely on basis of internet presence would impermissibly "risk the evisceration of constitutional limits"). Thus, Plaintiff has failed to prove, even *prima facie*, that BCE "purposefully avail[ed itself] . . . of the privilege of conducting activities in Maryland, thus invoking the benefits and protections of Maryland law." *Mylan*, 2 F.3d at 61. Therefore, personal jurisdiction over BCE is only proper if BCE's relationship with its six-tier subsidiary, Teleglobe USA, is that of principal to agent. *Id.*

2. Jurisdiction Based on Teleglobe USA's Conduct

Jurisdiction over a parent company based on the conduct of a subsidiary is only proper upon a finding of circumstances that warrant piercing the corporate veil. *Newman v. Motorola, Inc.*, 125 F.Supp.2d 717, 722 (D.Md. 2000). In Maryland, courts have adopted the "'agency' test in deciding whether to pierce the veil separating parent corporations from their subsidiaries for jurisdictional purposes." *Mylan*, 2 F.3d at 61. Applying the same determination of agency as the test for piercing the corporate veil, courts may "only attribute the subsidiary's actions to the parent 'if the parent exerts considerable control over the activities of the subsidiary.'" *Newman*, 125 F.Supp.2d at 723 (quoting *Mylan*, 2 F.3d at 61.). While the central inquiry looks at whether the parent must approve significant decisions of the subsidiary, see *Translation Systems, Inc. v. Applied Tech-Ventures*, 559 F.Supp. 566, 567 (D.Md. 1983), courts also examine factors such as "whether the parent and subsidiary keep separate books and records, use separate accounting procedures, and hold separate directors' meetings . . . [as well as whether] there is an independent reason for the existence of the company; that is, it must not be fraudulently incorporated or undercapitalized." *Newman*, 125 F.Supp.2d at 723 (quoting *Mylan*, 2 F.3d at 61.). In making its determination, the court must consider, "not isolated acts, but the totality of the

relationship between the parent and the subsidiary." *Call Carl, Inc. v. BP Oil Corp.*, 391 F.Supp. 367, 371 (D.Md. 1975).

To support its contention that BCE exerted considerable control over the activities of Teleglobe USA, Plaintiff asserts that (1) BCE and Teleglobe USA shared officers and directors; (2) BCE was involved in the daily management of Teleglobe USA; (3) "Teleglobe" provided long distance service for BCE and Teleglobe USA networks used, "to the extent available," lines owned by Teleglobe Inc.; and (4) BCE disregarded corporate formalities to enhance the image of its subsidiaries by using the same logos and trademarks owned by BCE for its subsidiaries and providing employees with a BCE savings plan and BCE stock or options. See paper no. 8, at 7-10. None of these alleged acts, even when viewed in their totality, meet the showing required to pierce the corporate veil for purposes of personal jurisdiction.

Without more, "[i]nterlocking directorships and complete ownership of the subsidiary's stock by the parent," are insufficient to demonstrate an agency relationship. *Call Carl*, 391 F.Supp. at 372. Rather, a parent corporation must also be shown to "exercise continuing and substantial influence over the internal affairs of the subsidiary." *Id.* at 373. In cases where courts have pierced the corporate veil of parent corporations that shared directors or officers with their subsidiaries, there

was a "substantial overlap" of multiple officers and directors, all of whom were shown to have coordinated the activities of the parent and subsidiaries and exerted "direct control over both organizations in furtherance of a comprehensive marketing plan." *Id.* at 374 (discussing a number of cases and the factors taken into consideration by each when deciding whether to pierce the corporate veil for jurisdictional purposes).

Here, Plaintiff points only to limited instances where directors or officers overlapped for only a limited time. As stated in the affidavit of Leo Houle: "since February 2002 Teleglobe USA and BCE have not shared any officers or directors. Prior to that time, only three officers of Teleglobe USA held significant offices in BCE, and none was a director of BCE." Paper no. 13, ex. C, ¶ 9. There is no evidence that the sharing of officers accompanied or fostered control by BCE over the activities and policy decisions of Teleglobe USA. Without evidence of substantial control, the sharing of officers does not demonstrate that Teleglobe USA was an agent acting on behalf of BCE. See *Newman*, 125 F.Supp.2d at 723 (refusing to pierce corporate veil when parent and subsidiary existed as separate corporate entities despite fact that parent "will control certain decisions and even must approve changes").

Furthermore, while Plaintiff asserts that BCE maintained direct control over the daily management and internal operations of its subsidiaries, he provides no evidence to support that assertion. To the contrary, Defendant, through the affidavit of Leo Houle, asserts that BCE never controlled its subsidiaries' internal operations, but limited its activities to those typical of a parent holding company. See paper no. 4, ex. A, ¶ 7. Moreover, Teleglobe USA has functioned as a separate entity from BCE, maintaining separate business records from those of BCE, paying its employees with checks drawn on its own bank accounts, forming its own contractual relationships with debtors and creditors, holding separate directors' meetings, and maintaining its own facilities, personnel, and managing executives. See *id.* ¶ 10. Perhaps most importantly, Teleglobe USA was not required to seek or obtain approval from BCE for its decision to recruit or enter into employment agreements. See *id.* ¶ 14-15. As such, Plaintiff has not sufficiently established a substantial overlap in directors or that there existed "conscious control by [BCE] . . . of major aspects of the subsidiary's operations." *Call Carl*, 391 F.Supp. at 374.

Furthermore, "it is axiomatic that if a subsidiary maintains its own books and accounts, and makes its own marketing, purchasing, management and other policy decisions, it cannot be

held to be acting as an agent of the parent." *Call Carl*, 391 F.Supp. at 371; see also *Mylan*, 2 F.3d at 62-63. Although BCE included the statements of its subsidiaries on its financial statements, it did so in accordance with Canadian law while maintaining corporate separateness in all other regards. Indeed, BCE and each of its subsidiaries kept separate financial records and issued separate financial statements. See paper no. 13, ex. C, ¶ 11. The strict adherence to the formal separateness of BCE and its subsidiaries is not diminished by the inclusion of Teleglobe USA's statements in BCE's financial statements or an overlap in employee benefits. See *Shapiro v. Ford Motor Co.*, 359 F.Supp. 350, 353-55 (D.Md. 1973).

Plaintiff also relies on the use of BCE licensed trademarks by BCE subsidiaries as proof that Teleglobe USA was an agent acting on behalf of BCE in Maryland. Even assuming BCE owned the trademarks used by its various subsidiaries, such ownership does not demonstrate that BCE controlled, marketed, and disposed of Teleglobe USA's assets as its own. See *Carl Call*, 391 F.Supp. at 375; see also *Shapiro*, 359 F.Supp. at 353-54 (use of "Ford" trademark by subsidiary, among other factors, did not prevent court from finding maintenance of formal corporate separateness). While Plaintiff alleges that he was instructed to change the insignia on letterheads, business cards, and

brochures from that of Teleglobe to BCE Teleglobe, he has not alleged that BCE in fact issued this command. Moreover, there is nothing in the relevant pleadings indicating that the use of a BCE, or BCE-related, logo was in any way part of BCE's control and disposal of Teleglobe USA's assets as its own. Accordingly, the allegations are insufficient to warrant piercing the corporate veil and the court therefore lacks personal jurisdiction over BCE in this matter.

B. Plaintiff's Request for Limited Discovery

Plaintiff also requests an opportunity to conduct limited discovery regarding jurisdiction, claiming that Defendant has exclusive access to information relevant to this determination. Plaintiff's request will be denied.

The Federal Rules of Civil Procedure permit discovery that is broad in scope and freely permitted. See *Mylan*, 2 F.3d at 64. On the other hand, district courts "have broad discretion in [their] resolution of discovery problems that arise in cases pending before [them]." *Id.* (quoting *In re Multi-Piece Rim Prods. Liab. Litig.*, 653 F.2d 671, 679 (D.C.Cir. 1981)) (alterations in original). It is within the court's discretion to deny jurisdictional discovery, when a plaintiff offers "only speculation or conclusory assertions about contacts with a forum state." *Carefirst*, 334 F.3d at 402-03 (citing *McLaughlin v.*

McPhail, 707 F.2d 800, 806 (4th Cir. 1983) for its holding that district court did not abuse its discretion in denying jurisdictional discovery when, "[a]gainst the defendants' affidavits," plaintiff "offered 'nothing beyond his bare allegations'" that Defendant had significant contacts with the forum state of Maryland).

Without citing legal authority, Plaintiff claims that Defendant has not adequately addressed or explained BCE's daily relationship with Teleglobe USA and that jurisdictional discovery is therefore necessary. Notwithstanding Plaintiff's argument to the contrary, the affidavits submitted by Defendant adequately and emphatically address the lack of involvement and control that BCE had over the daily management and operations of Teleglobe USA. See, e.g., paper no. 4, ex. A, ¶¶ 7, 10, 13-15; paper no. 13, at 12. In contrast, Plaintiff has provided the court with no evidence to refute Defendant's assertions. He does not provide competent evidence that refutes the affidavits submitted by Defendant denying the existence of such contacts; rather, he provides only speculation and conclusory allegations of sufficient contacts. Furthermore, Plaintiff has not provided reason to believe that there exists additional information that Plaintiff has not had access to or that would affect or alter the court's analysis of personal jurisdiction in this case. See

Carefirst, 334 F.3d at 420. Therefore, Plaintiff's request for jurisdictional discovery is not warranted and will be denied.⁴ See *Estate Bank*, 286 F.Supp.2d at 520.

IV. Conclusion

Based on the foregoing reasons, Defendant's motion to dismiss for lack of personal jurisdiction will be granted. A separate order will follow.

/s/

DEBORAH K. CHASANOW
United States District Judge

April 28, 2004

⁴ Without properly moving, Plaintiff has also indicated a desire to have this case transferred to the United States District Court for the District of Columbia. Plaintiff offers virtually no support for such a transfer other than the fact that "BCE Inc. is already being sued in the District of Columbia." See paper no. 8, at 19. Neither the allegations in Plaintiff's complaint nor the relevant pleadings appear to contain a sufficient basis to warrant the requested transfer. Accordingly, Plaintiff's complaint will be dismissed, without transfer to another jurisdiction.